



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB5369

Introduced 2/5/2010, by Rep. Eddie Washington

#### SYNOPSIS AS INTRODUCED:

750 ILCS 5/601	from Ch. 40, par. 601
750 ILCS 5/606	from Ch. 40, par. 606
755 ILCS 5/11-8	from Ch. 110 1/2, par. 11-8
755 ILCS 5/11-10.1	from Ch. 110 1/2, par. 11-10.1

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that a child custody proceeding may be commenced by a person who provides "kinship care", by filing a petition that alleges that it is in the best interest of the child to live with him or her, if the person is the "de facto custodian" of the child. Provides that "de facto custodian" means the person who has been the primary caregiver for, and financial supporter of, a child who has resided with the person: for a period of 6 months or more, if the child is under 3 years of age; or for a period of one year or more, if the child is 3 years of age or older. Provides that "kinship care" means the care, nurturing, and protection of a child by a relative, grandparent, godparent, stepparent, or any adult who has physical custody and a kinship bond with a child. Provides that any notice of hearing in the proceeding shall be served by personal service or sent by certified or registered mail to all persons who have appeared of record in the proceeding. Amends the Probate Act of 1975. Provides that unless excused by the court for good cause shown, a petition for guardianship of a minor and a notice of hearing on the petition shall be given by personal service or by certified or registered mail to the minor, the minor's relatives, and the person having custody of the minor (instead of giving notice of the hearing on the petition, in person or by mail, to the minor and to the minor's relatives). Provides that the requirement that a copy of the petition and notice be served on or delivered to the person having custody of the minor is jurisdictional, but failure to provide copies to any relative is not jurisdictional (instead of providing that the failure to provide copies to any relative is not jurisdictional). Provides that a notice of hearing in a proceeding concerning guardianship of a minor shall be sent by certified or registered mail, return receipt requested, to all persons who have appeared of record in the proceeding.

LRB096 19322 AJO 34713 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Marriage and Dissolution of  
5 Marriage Act is amended by changing Sections 601 and 606 as  
6 follows:

7 (750 ILCS 5/601) (from Ch. 40, par. 601)

8 Sec. 601. Jurisdiction; Commencement of Proceeding.

9 (a) A court of this State competent to decide child custody  
10 matters has jurisdiction to make a child custody determination  
11 in original or modification proceedings as provided in Section  
12 201 of the Uniform Child-Custody Jurisdiction and Enforcement  
13 Act as adopted by this State.

14 (b) A child custody proceeding is commenced in the court:

15 (1) By ~~by~~ a parent, by filing a petition:

16 (i) for dissolution of marriage or legal  
17 separation or declaration of invalidity of marriage;  
18 or

19 (ii) for custody of the child, in the county in  
20 which he is permanently resident or found.†

21 (2) By ~~by~~ a person other than a parent, by filing a  
22 petition for custody of the child in the county in which he  
23 is permanently resident or found, but only if he is not in

1 the physical custody of one of his parents. ~~7 or~~

2 (3) By ~~by~~ a stepparent, by filing a petition, if all of  
3 the following circumstances are met:

4 (A) the child is at least 12 years old;

5 (B) the custodial parent and stepparent were  
6 married for at least 5 years during which the child  
7 resided with the parent and stepparent;

8 (C) the custodial parent is deceased or is disabled  
9 and cannot perform the duties of a parent to the child;

10 (D) the stepparent provided for the care, control,  
11 and welfare to the child prior to the initiation of  
12 custody proceedings;

13 (E) the child wishes to live with the stepparent;  
14 and

15 (F) it is alleged to be in the best interests and  
16 welfare of the child to live with the stepparent as  
17 provided in Section 602 of this Act.

18 (3.1) By a person who provides "kinship care" to the  
19 child, by filing a petition that alleges that it is in the  
20 best interest of the child to live with the person as  
21 provided in Section 602 of this Act, if the person is the  
22 "de facto" custodian of the child.

23 For purposes of this paragraph (3.1):

24 "De facto custodian" means the person who has been the  
25 primary caregiver for, and the financial supporter of, a  
26 child who has resided with the person: (i) for a period of

1       6 months or more, if the child is under 3 years of age; or  
2       (ii) for a period of one year or more, if the child is 3  
3       years of age or older.

4       "Kinship care" means the care, nurturing, and  
5       protection of a child by a relative, grandparent,  
6       godparent, stepparent, or any adult who has physical  
7       custody and a kinship bond with the child.

8       (4) When one of the parents is deceased, by a  
9       grandparent who is a parent or stepparent of a deceased  
10      parent, by filing a petition, if one or more of the  
11      following existed at the time of the parent's death:

12           (A) the surviving parent had been absent from the  
13      marital abode for more than one month without the  
14      deceased spouse knowing his or her whereabouts;

15           (B) the surviving parent was in State or federal  
16      custody; or

17           (C) the surviving parent had: (i) received  
18      supervision for or been convicted of any violation of  
19      Article 12 of the Criminal Code of 1961 directed  
20      towards the deceased parent or the child; or (ii)  
21      received supervision or been convicted of violating an  
22      order of protection entered under Section 217, 218, or  
23      219 of the Illinois Domestic Violence Act of 1986 for  
24      the protection of the deceased parent or the child.

25      (c) Notice of a child custody proceeding, including an  
26      action for modification of a previous custody order, shall be

1 given to the child's parents, guardian, and de facto custodian,  
2 who may appear, be heard, and file a responsive pleading. The  
3 court, upon showing of good cause, may permit intervention of  
4 other interested parties.

5 (d) Proceedings for modification of a previous custody  
6 order commenced more than 30 days following the entry of a  
7 previous custody order must be initiated by serving a written  
8 notice and a copy of the petition for modification upon the  
9 child's parent, guardian and custodian at least 30 days prior  
10 to hearing on the petition. Nothing in this Section shall  
11 preclude a party in custody modification proceedings from  
12 moving for a temporary order under Section 603 of this Act.

13 (e) (Blank).

14 (f) The court shall, at the court's discretion or upon the  
15 request of any party entitled to petition for custody of the  
16 child, appoint a guardian ad litem to represent the best  
17 interest of the child for the duration of the custody  
18 proceeding or for any modifications of any custody orders  
19 entered. Nothing in this Section shall be construed to prevent  
20 the court from appointing the same guardian ad litem for 2 or  
21 more children that are siblings or half-siblings.

22 (Source: P.A. 93-108, eff. 1-1-04; 93-1026, eff. 1-1-05.)

23 (750 ILCS 5/606) (from Ch. 40, par. 606)

24 Sec. 606. Hearings.

25 (a) Custody proceedings shall receive priority in being set

1 for hearing. Any notice of hearing in a custody proceeding  
2 shall be served by personal service or sent by certified or  
3 registered mail, return receipt requested, to all who have  
4 appeared of record in the custody proceeding.

5 (b) The court may tax as costs the payment of necessary  
6 travel and other expenses incurred by any person whose presence  
7 at the hearing the court deems necessary to determine the best  
8 interest of the child.

9 (c) The court, without a jury, shall determine questions of  
10 law and fact. If it finds that a public hearing may be  
11 detrimental to the child's best interest, the court may exclude  
12 the public from a custody hearing, but may admit any person who  
13 has a direct and legitimate interest in the particular case or  
14 a legitimate educational or research interest in the work of  
15 the court.

16 (d) If the court finds it necessary, in order to protect  
17 the child's welfare, that the record of any interview, report,  
18 investigation, or testimony in a custody proceeding be kept  
19 secret, the court may make an appropriate order sealing the  
20 record.

21 (e) Previous statements made by the child relating to any  
22 allegations that the child is an abused or neglected child  
23 within the meaning of the Abused and Neglected Child Reporting  
24 Act, or an abused or neglected minor within the meaning of the  
25 Juvenile Court Act of 1987, shall be admissible in evidence in  
26 a hearing concerning custody of or visitation with the child.

1 No such statement, however, if uncorroborated and not subject  
2 to cross-examination, shall be sufficient in itself to support  
3 a finding of abuse or neglect.

4 (Source: P.A. 87-1081.)

5 Section 10. The Probate Act of 1975 is amended by changing  
6 Sections 11-8 and 11-10.1 as follows:

7 (755 ILCS 5/11-8) (from Ch. 110 1/2, par. 11-8)

8 Sec. 11-8. Petition for guardian of minor.

9 (a) The petition for appointment of a guardian of the  
10 estate, or of both the person and estate, of a minor, or for  
11 appointment of the guardian of the person only of a minor or  
12 minors must state, if known: (1) the name, date of birth and  
13 residence of the minor; (2) the names and post office addresses  
14 of the nearest relatives of the minor in the following order:  
15 (i) the spouse, if any; if none, (ii) the parents and adult  
16 brothers and sisters, if any; if none, (iii) the nearest adult  
17 kindred; (3) the name and post office address of the person  
18 having the custody of the minor; (4) the approximate value of  
19 the personal estate; (5) the amount of the anticipated gross  
20 annual income and other receipts; (6) the name, post office  
21 address and, in case of an individual, the age and occupation  
22 of the proposed guardian; (7) the facts concerning the  
23 execution or admission to probate of the written designation of  
24 the guardian, if any, a copy of which shall be attached to or

1 filed with the petition; and (8) the facts concerning any  
2 juvenile, adoption, parentage, dissolution, or guardianship  
3 court actions pending concerning the minor or the parents of  
4 the minor and whether any guardian is currently acting for the  
5 minor. In addition, if the petition seeks the appointment of a  
6 previously appointed standby guardian as guardian of the minor,  
7 the petition must also state: (9) the facts concerning the  
8 standby guardian's previous appointment and (10) the date of  
9 death of the minor's parent or parents or the facts concerning  
10 the consent of the minor's parent or parents to the appointment  
11 of the standby guardian as guardian, or the willingness and  
12 ability of the minor's parent or parents to make and carry out  
13 day-to-day child care decisions concerning the minor.

14 (b) A single petition for appointment of only a guardian of  
15 the person of a minor may include more than one minor. The  
16 statements required in items (1) and (2) of subsection (a)  
17 shall be listed separately for each minor.

18 (c) Any notice of hearing in a guardianship proceeding  
19 under this Section shall be served by personal service or sent  
20 by certified or registered mail, return receipt requested, to  
21 all persons who have appeared of record in the guardianship  
22 proceeding.

23 (Source: P.A. 90-796, eff. 12-15-98.)

24 (755 ILCS 5/11-10.1) (from Ch. 110 1/2, par. 11-10.1)

25 Sec. 11-10.1. Procedure for appointment of a standby

1 guardian or a guardian of a minor.

2 (a) Unless excused by the court for good cause shown, it is  
3 the duty of the petitioner to provide a copy of the petition  
4 and give notice of the time and place of the hearing on the  
5 petition by personal service or by certified or registered  
6 mail, return receipt requested, in person or by mail, to the  
7 minor, if the minor is 14 years, or older, ~~and~~ to the relatives  
8 of the minor, and to the person having custody of the minor  
9 whose names and addresses are stated in the petition, not less  
10 than 3 days before the hearing.<sup>7</sup> The requirement that a copy of  
11 the petition and notice be served on or delivered to the person  
12 having custody of the minor is jurisdictional, but failure to  
13 provide a copy of the petition and give notice to any relative  
14 is not jurisdictional.

15 (b) In any proceeding for the appointment of a standby  
16 guardian or a guardian the court may appoint a guardian ad  
17 litem to represent the minor in the proceeding.

18 (Source: P.A. 88-529.)